

REMARKS

With this Response, independent claim 23 has been amended. No claims have been added or cancelled. Consequently, claims 23-31 are pending and under consideration. In view of the amendment above and remarks that follow, reconsideration of the present application is respectfully requested.

Independent claim 23 has been amended as described more fully hereinafter. Entry of the amendment is respectfully requested.

35 USC 112

Claim 23 was rejected under 35 USC 112, second paragraph, as being indefinite. As shown above, claim 23 has been amended to remove the term “about” from the claim language. It is respectfully requested that the rejection under 35 USC 112 be withdrawn and the claim be reconsidered.

35 USC 103

Claims 23-31 were rejected under 35 USC 103(a) as being unpatentable over Kohl for reasons of record at pages 3-4 of the Office Action. Applicants respectfully traverse.

The Office Action states that “the claims lack a physical step of actually taking the recited beverage once daily for treating dental erosion.” That is not the case. Independent claim 23 and thus necessarily dependent claims 24-31 therefrom recite, inter alia, “A method of treating dental erosion comprising orally administering to a human...” (Emphasis added). Thus, the claims do in fact recite a physical step of actually orally administering an effective amount of the beverage composition recited in independent claim 23. Therefore, not only does independent claim 23 recite a human in need thereof who has been directed to ingest at least once daily a beverage composition for the purpose of treating dental erosion, it also positively recites orally administering to the human the beverage composition as recited in independent claim 23. Hence, the method of independent claim 23 includes an actual physical step of taking the recited beverage. Additionally, independent claim 23 recites, inter alia, “A method of treating dental erosion comprising orally administering to a human, in need thereof and who has been directed to ingest at least once daily, for the purpose of treating said dental erosion, an effective amount of a beverage composition...” The “at least once

daily” was previously added as an element not found, disclosed, taught, or suggested in the prior art or the Board of Appeals’ decision. This type of temporal dosing requirement, such as “at least once daily”, is not disclosed, taught, or suggested in the prior art. Thus, since the references of record are silent regarding all of the elements of independent claim 23, and thus dependent claims 24-31, reconsideration and withdrawal of the rejection are respectfully requested.

Additionally, to rebut the discussion on page 4 of the Office Action related to what is termed “non-functional” claim elements, Applicants submit that a functional relationship does in fact exist between “been directed” and the method of orally administering a beverage as recited in independent claim 23. On page 5, lines 9-19, of the application as filed, the specification states:

Wherein the mammal is directed to ingest one or more of the beverage compositions, such direction may be that which instructs and / or informs the user that use of the beverage composition may and / or will provide treatment against dental erosion. For example, such direction may be oral direction (*e.g.*, through oral instruction from, for example, a physician, dental professional, sales professional or organization, and / or radio or television media (*i.e.*, advertisement) or written direction (*e.g.*, through written direction from, for example, a physician or dental professional (*e.g.*, scripts), sales professional or organization (*e.g.*, through, for example, marketing brochures, pamphlets, or other instructive paraphernalia), written media (*e.g.*, internet, electronic mail, or other computer-related media), and / or packaging associated with the beverage composition (*e.g.*, a label present on a package containing the beverage composition).

Thus, as described in the specification, direction to ingest the beverage composition can include instruction and/or information to the user that use of the beverage composition may and/or will provide treatment against dental erosion. Such direction can be oral direction or written direction and/or packaging associated with the beverage composition. Accordingly, this direction is indeed functional as it includes information to the user that use of the beverage composition may and/or will provide treatment against dental erosion and is thus related to the method of orally administering the beverage composition as recited in independent claim 23. Moreover, this direction, inter alia, is yet another element that is not found in combination with the other elements of independent claim 23 and the dependent claims therefrom in the references of record. Therefore,

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for this additional reason, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 USC 103(a) over Kohl.

CONCLUSION

It should be understood that the above remarks and amendments are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the previous Office Actions but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

For the foregoing reasons and in view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. If, after reviewing this amendment, the Examiner feels that any issues remain that must be resolved before the application can be passed to issue, the Examiner is invited to contact the Applicant's undersigned representative by telephone to resolve such issues.

Respectfully submitted,
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